



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** PathLab, P.A.--Request for Reconsideration  
**File:** B-236363.2  
**Date:** September 19, 1989

### DIGEST

1. Request for reconsideration is denied where protest against cancellation of solicitation was properly dismissed as being academic and where protest of alleged improprieties in a solicitation not yet announced is premature.
2. There is no basis for recovery of bid preparation or protest costs where protest is dismissed as academic.

### DECISION

PathLab, P.A., has requested that we reconsider our dismissal of its protest against request for proposals (RFP) No. 246-89-R-0046, issued by Indian Health Service (IHS), Department of Health and Human Services, for various pathology services.

The request for reconsideration is denied.

PathLab contended in its protest that there is no medical necessity for the requirement that specimens be in transit for a maximum of 3 hours between the IHS facility and the contract laboratory. PathLab also asserted that the quality levels stated in the RFP are unjustifiably restrictive and a reduction in payments provision for an unacceptable quality level was ambiguous. PathLab requested its costs for filing and pursuing the protest.

We dismissed the protest as academic because IHS canceled the solicitation.

PathLab asserts that the reason IHS canceled the solicitation is because of PathLab's protest and not because the only offeror was unable to propose on all items as stated by IHS. PathLab contends, therefore, that its protest is not academic. Additionally, Pathlab argues that although IHS indicated one of the bases of protest would be addressed in a new solicitation, this does not dispose of the substance

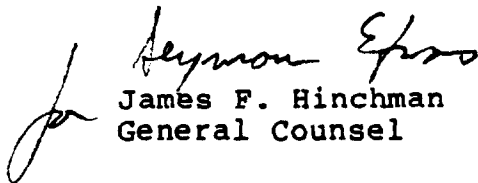
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of PathLab's protest or the fact that two other protest issues will be unaddressed. Finally, PathLab reiterates its request for attorneys' fees and costs associated with filing and pursuing its protest.

In a negotiated procurement, the contracting officer need only have a reasonable basis for canceling the solicitation. Even though PathLab thinks that its protest was the cause of the solicitation being canceled, IHS has stated a reasonable basis for canceling the solicitation, namely that the only offeror was unable to propose on all items. Since the solicitation has been canceled, the alleged defects therein are no longer at issue and were properly dismissed as academic. To the extent PathLab is arguing that IHS will not properly address its protest issues in a future solicitation, its contentions are premature. See Access Innovations, Inc., B-232510, Oct. 4, 1988, 88-2 CPD ¶ 321, aff'd, Access Innovations, Inc.--Request for Reconsideration, B-232510.2, Dec. 29, 1988, 88-2 CPD ¶ 635.

With respect to PathLab's request for protest costs, we have held that an essential condition to a declaration that a protester is entitled to award of costs is a decision on the merits of the protest. Nationwide Roofing and Sheet Metal Co., Inc., B-231895.2, Oct. 28, 1988, 88-2 CPD ¶ 404. Since PathLab's protest was properly dismissed as academic after the RFP was canceled, and as a result, no decision on the merits was issued, there is no basis for award of costs. Id.

The request for reconsideration is denied.

  
James F. Hinchman  
General Counsel